

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 United States of America,

4 Plaintiff

5 v.

6 Adrian Leyva Tamayo,

7 Defendant

Case No.: 2:20-cr-00194-JAD-DJA-2

**Order Granting Motion for
Reconsideration Regarding
Criminal-History Point Reduction**

[ECF No. 238]

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9 Adrian Leyva Tamayo is roughly 53 months into an 81-month sentence for identity theft
10 and device fraud. Last month, Tamayo moved pro se for “a court order reflecting his actual
11 criminal-history score of 4 points.”¹ But I denied his motion because Tamayo did not show that
12 a sentencing court has the power to issue such an order so long after sentencing. The Federal
13 Public Defender’s Office then filed a motion for reconsideration on Tamayo’s behalf, along with
14 a Notice of Eligibility for Criminal History Point Reduction. Having reviewed that notice, I
15 grant the reconsideration request and find that Tamayo’s criminal-history points should be
16 reduced by two, resulting in a total of four criminal-history points, but not changing his sentence
17 in any way.

18 **Discussion**

19 A district court “possesses the inherent procedural power to reconsider, rescind, or
20 modify an interlocutory order for cause seen by it to be sufficient[,]” so long as it has
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¹ ECF No. 235 at 3 (cleaned up).

1 jurisdiction.² A motion to reconsider must set forth “some valid reason why the court should
2 reconsider its prior decision” by presenting “facts or law of a strongly convincing nature.”³
3 Reconsideration is appropriate if the court “(1) is presented with newly discovered evidence,
4 (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an
5 intervening change in controlling law.”⁴ “A motion for reconsideration is not an avenue to re-
6 litigate the same issues and arguments upon which the court already has ruled.”⁵ And a motion
7 for reconsideration may not be based on arguments or evidence that could have been raised
8 previously.⁶

9 Here, reconsideration is warranted because the Federal Public Defender’s (FPD) office
10 has filed a notice explaining that Tamayo qualifies for a reduction of criminal-history points
11 under General Order (GO) 2024-01.⁷ According to GO 2024-01, “[b]ecause criminal[-]history
12 points may have administrative consequences for convicted defendants,” requests for retroactive
13 reduction of criminal-history points under Amendment 821 must be considered by courts in the
14 District of Nevada “regardless of whether a reduction in criminal[-]history points would change
15 the defendant’s sentencing[-]guidelines range or reduce the defendant’s sentence.”⁸ The FPD’s
16 notice explains that Tamayo qualifies for a reduction of criminal-history points under

18 ² *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir.
19 2001) (quotation and emphasis omitted); *see also Smith v. Clark Cty. Sch. Dist.*, 727 F.3d 950,
955 (9th Cir. 2013); LR 59-1.

20 ³ *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003).

21 ⁴ *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

22 ⁵ *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev. 2005).

23 ⁶ *See Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).

⁷ ECF No. 236.


⁸ General Order 2024-01 at 1–2 (D. Nev. June 28, 2024).

1 Amendment 821 and GO 2024-01 and asks that Tamayo's criminal-history points be reduced by
2 two, resulting in a total of four criminal-history points.⁹

3 In my previous order, I found that Tamayo was correct that Amendment 821 eliminated
4 two status points, and that reduction left him with four points.¹⁰ But I also explained that
5 Tamayo did not cite any authority for the proposition that the law allows the court to issue an
6 order declaring that Amendment 821 results in a lower criminal-history score if that new score
7 doesn't change the sentencing range.¹¹ Now that the FPD's office has kindly directed me to
8 GO 2024-01, which supplies that authority, I find that a retroactive, two-point reduction in
9 Tamayo's criminal-history points is warranted. His motion for reconsideration is therefore
10 granted, and I direct the U.S. Probation Office to recalculate Tamayo's criminal-history points
11 accordingly.

12 Conclusion

13 IT IS THEREFORE ORDERED that Adrian Leyva Tamayo's motion for reconsideration
14 **[ECF No. 238] is GRANTED.** Tamayo qualifies for a reduction in his criminal-history points
15 under Amendment 821, so his criminal-history points are reduced to four. The U.S. Probation
16 Office is directed to recalculate Tamayo's criminal-history points accordingly. But his sentence
17 does not change.

18 
19 U.S. District Judge Jennifer A. Dorsey
20 February 25, 2025
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22 ⁹ ECF No. 236 at 1.

23 ¹⁰ ECF No. 237 at 2.

¹¹ *Id.* at 3.